

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

Case No. 16-2010-206517

)
)
SUSHIL ANIRUDDH SHETH, M.D.)

OAH No. 2011040305

Physician's & Surgeon's)
Certificate No. A 49675)

)
)

Respondent)

CORRECTED DECISION ORDER PAGE

The attached Proposed Decision of Ruth S. Astle, Administrative Law Judge, of May 19, 2011, in Oakland is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The Proposed Decision is amended as follows:

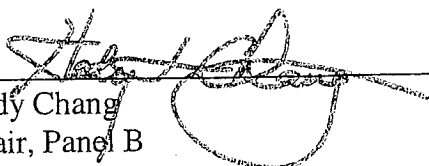
1. Page 1, paragraph 2, lines 2-3 – “Respondent’s certificate expired November 30, 2010, and is suspended....”

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on: **August 5, 2011.**

It is so Ordered on: **July 6, 2011.**

MEDICAL BOARD OF CALIFORNIA



Hedy Chang
Chair, Panel B

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)	Case No. 16-2010-206517
)	
)	OAH No. 2011040305
SUSHIL ANIRUDDH SHETH, M.D.)	
)	
Physician's & Surgeon's)	
Certificate No. A 49675)	
)	
<u>Respondent.)</u>		

DECISION

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1. Page 1, paragraph #2, lines 2-3 – "Respondent's certificate expired November 30, 2010 and is suspended ..."

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on

ORDERED August 5, 2011

MEDICAL BOARD OF CALIFORNIA



Hedy Chang
Chair, Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SUSHIL ANIRUDDH SHETH, M.D.

Physician and Surgeon's Certificate No.
A49675

Respondent.

Case No. 16-2010-206517

OAH No. 2011040305

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 2, 2011.

David Carr, Deputy Attorney General, represented complainant.

Albert J. Garcia, Attorney at Law, represented respondent, who appeared by telephone.

The matter was submitted on June 2, 2011.

FACTUAL FINDINGS

1. Linda K. Whitney made this accusation in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On June 27, 1991, Physician and Surgeon's Certificate No. A49675 was issued by the Board to Sushil Aniruddh Sheth, M.D. (respondent). Respondent's certificate expired August 3, 2010 and is suspended based on an order issued on August 3, 2010, pursuant to Business and Professions Code section 2310, subdivision (a).

3. On March 26, 2010, the State of Illinois Department of Financial and Professional Regulation Division of Professional Regulation issued a Consent Order regarding respondent's license to practice medicine in the State of Illinois. The Illinois Department indefinitely suspended respondent's license based on respondent criminal

conviction for health care fraud. Respondent's conduct and the action of the Illinois Department constitute unprofessional conduct within the meaning of the law.

4. Respondent was indicted in the United States District Court Northern District of Illinois on charges of health care fraud in violation of Title 18, United States Code, section 1347. On August 19, 2009, pursuant to a plea agreement, respondent entered a guilty plea. As part of the plea agreement, respondent, a cardiologist, admitted that from at least January 2002 through June 2007, he defrauded numerous private and federal health care benefit programs including Medicare, and fraudulently submitted reimbursement claims for services he did not provide. Respondent used his hospital privileges to access and obtain information about patients without their knowledge or consent. He then hired individuals to bill Medicare and other insurance providers for medical services that he purportedly rendered to patients he knew he had never treated. Respondent obtained over \$12 million as a result of his criminal activity. A judgment of conviction was entered on August 11, 2010. Respondent was sentenced to 60 months in Federal Prison, which he is serving at a minimum security prison in Indiana.

5. Respondent testified by telephone at the hearing. He claims to take responsibility for his actions. He became greedy. Respondent stated that all of his assets were seized and will cover the restitution of over \$12 million that he has been ordered to pay.

6. Respondent graduated from medical school in Bombay, India (1981). He did an internship in Buffalo, New York, and a residency at the University of Illinois at Urbana-Champaign, Illinois (1988 – 1990). He completed a fellowship in Cardiology at Cedars Sinai Medical Center, Los Angeles, California (1995). He is Board Certified in Internal Medicine (1997) and Cardiology (1999).

7. Respondent presented 13 character letters that were written for the Federal Court prior to sentencing. None of the letters refers to this action.

8. Respondent has done some continuing education while he is incarcerated including reading journals and participating in on-line classes.

9. There is no way to evaluate respondent's rehabilitation while he is incarcerated¹. While he has made some efforts, it is not nearly enough to demonstrate that he is safe to practice medicine in California. The only appropriate disciplinary action at this time is revocation.

¹ See *In Re Gossage* (2000) 23 Cal.4th 1080.

LEGAL CONCLUSIONS

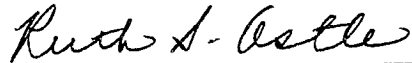
1. By reason of the matters set forth in Findings 3 and 4, cause for disciplinary action exists pursuant to Business and Professions Code sections 141, subdivision (a) and 2305 (discipline in another state).

2. The matters set forth in Findings 5 through 9 have been considered in making the following order.

ORDER

Physician and Surgeon's Certificate No. A49675 issued to respondent Sushil Aniruddh Sheth, M.D. is revoked.

DATED: 6 / 9 / 11



RUTH S. ASTLE

Administrative Law Judge

Office of Administrative Hearings

EDMUND G. BROWN JR.
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General
JANE ZACK SIMON
Deputy Attorney General [SBN 116564]
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5544
Fax: (415) 703-5480
E-mail: Janezack.simon@doj.ca.gov
*Attorneys for Complainant
Medical Board of California*

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

Case No. 16-2010-206517

In the Matter of the Accusation Against:

ACCUSATION

SUSHIL ANIRUDDH SHETH, M.D.

1743 Heather Hill Crescent
Flossmoor, IL 60422-2041

Physician's and Surgeon's
Certificate No. A49675

Respondent.

The Complainant alleges:

1. Complainant Linda K. Whitney is the Executive Director of the Medical Board of California, Department of Consumer Affairs, and brings this Accusation solely in her official capacity.

2. On June 27, 1991, Physician's and Surgeon's Certificate No. A49675 was issued by the Medical Board of California to Sushil Aniruddh Sheth, M.D. ("respondent.") The certificate will expire on November 30, 2010 and is SUSPENDED based on an order issued on August 3, 2010 pursuant to Business and Professions Code section 2310(a).

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3. This Accusation is brought before the Medical Board of California¹, (the
for the authority of the following sections of the California Business and Professions
and/or other relevant statutory enactment:

A. Section 2227 of the Code provides in part that the Board may suspend the license of a physician for a period not to exceed one year, or place on probation, the license of a physician who has been found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.

B. Section 2305 of the Code provides, in part, that the revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a person's medical license or certificate of practice medicine issued by that state, that would have been grounds for discipline or suspension of the person's medical license or certificate of practice in California under the Medical Practice Act, constitutes grounds for discipline or suspension of the person's medical license or certificate of practice in California for unprofessional conduct.

C. Section 141 of the Code provides:

“(a) For any licensee holding a license issued by a board under a department, a disciplinary action taken by another state, by the federal government, or by another country for any act related to the practice regulated by the California license, may be a disciplinary action by the respective state licensing board. A certified record of the disciplinary action taken against the licensee by another agency of the federal government, or by another country shall be evidence of the events related therein.

“(b) Nothing in this section shall preclude a board from applying any disciplinary provision in the licensing act administered by the board that is based upon a disciplinary action taken against the licensee by, or on behalf of, an agency of the federal government, or another country.”

D. Section 2234 provides that the Board shall take Action against any
e who is charged with unprofessional conduct.

E. Section 2236 of the Code provides that the conviction of any

¹. The term “Board” means the Medical Board of California; “Division of Medical” shall also be deemed to refer to the Board.

1 offense substantially related to the qualifications, functions, or duties of a
2 physician and surgeon constitutes unprofessional conduct.

3 **FIRST CAUSE FOR DISCIPLINE**

4 (Discipline, Restriction, or Limitation Imposed by Another State)

5 4. On March 26, 2010, the State of Illinois Department of Financial and
6 Professional Regulation Division of Professional Regulation ("Illinois Department") issued a
7 Consent Order regarding respondent's license to practice medicine in the State of Illinois. The
8 Illinois Department indefinitely suspended respondent's license based on respondent's criminal
9 conviction for Health Care Fraud. A true and correct copy of the Consent Order issued by the
10 Illinois Department is attached as Exhibit A.

11 5. Respondent's conduct and the action of the Illinois Department as set
12 forth in paragraph 4, above, constitute unprofessional conduct within the meaning of section 2305
13 and conduct subject to discipline within the meaning of section 141(a).

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Criminal Conviction)

16 6. Respondent was indicted in the United States District Court Northern
17 District of Illinois on charges of health care fraud in violation of Title 18, United States Code,
18 Section 1347. On August 19, 2009, pursuant to a Plea Agreement, respondent entered a guilty
19 plea. As part of the plea agreement, respondent, a cardiologist, admitted that from at least
20 January 2002 through June 2007, he defrauded numerous private and federal health care benefit
21 programs including the Medicare program and fraudulently submitted reimbursement claims for
22 services he did not provide. Respondent used his hospital privileges to access and obtain
23 information about patients without their knowledge or consent. He then hired individuals to bill
24 Medicare and other insurance providers for medical services that he purportedly rendered to
25 patients whom he knew he never treated. Respondent fraudulently obtained approximately
26 \$13,000,000 as a result of his criminal activity. A judgment of conviction was entered on August
27 11, 2010.
28

1 7 The foregoing constitutes the conviction of a crime substantially related to
2 the qualifications, functions, or duties of a physician and surgeon, and is cause for discipline
3 pursuant to Business and Professions Code sections 2234 and/or 2236.

4 **PRAYER**

5 **WHEREFORE**, the complainant requests that a hearing be held on the matters
6 herein alleged, and that following the hearing, the Board issue a decision:

- 7 1. Revoking or suspending Physician's and Surgeon's Certificate Number
8 A49675 heretofore issued to respondent Sushil Aniruddh Sheth, M.D.;
- 9 2. Revoking, suspending or denying approval of the respondent's authority to
10 supervise physician assistants;
- 11 3. Ordering respondent, if placed on probation, to pay the costs probation
12 monitoring; and
- 13 4. Taking such other and further action as the Board deems necessary and
14 proper.
- 15

16
17 DATED: September 16, 2010

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20 **LINDA K. WHITNEY**
21 Executive Director
22 Medical Board of California
23 Department of Consumer Affairs
24 State of California

25 Complainant
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27
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Exhibit A

**STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
DIVISION OF PROFESSIONAL REGULATION**

DEPARTMENT OF FINANCIAL AND)	
PROFESSIONAL REGULATION)	
of the State of Illinois,)	
)	
Complainant,)	
)	No. 200900763
v.)	
Sushil A. Sheth M.D.)	
License No. 036081476,)	
CS License 336043835)	
Respondent.)	

CONSENT ORDER

THE DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois, by and through Lisa Stephens, its Chief of Medical Prosecutions, and Sushil A. Sheth, Respondent, hereby agree to the following:

STIPULATIONS

Sushil A. Sheth ("Respondent") holds Certificates of Registration for a Physician and Surgeon License, No. 036081476, and a Physician Controlled Substance License, No. 336043835, issued by the Department of Financial and Professional Regulation of the State of Illinois ("Department"). Said licenses are presently in Active status. At all times material to the matter set forth in this Consent Order, the Department had jurisdiction over the subject matter and parties herein.

Information has come to the attention of the Department that Respondent pleaded guilty to one count of Health Care Fraud, in the United States District Court of the Northern District of Illinois, Case No. 09 CR 69. See Exhibit A attached hereto.

The allegations set forth herein, if proven to be true, would constitute grounds for the Department to revoke, suspend, or otherwise discipline Respondent's licenses on the authority of 225 ILCS 60/22(A)(3) and 225 ILCS 60/22(A)(5). As a result of the

foregoing allegations, the Department and Respondent have entered into negotiations in an effort to resolve this matter amicably.

Respondent has been advised of the right to have pending allegation(s) reduced to written charges, the right to counsel, the right to a hearing, the right to contest any charges brought, and the right to administrative review of this Consent Order. Respondent knowingly waives each of these rights, as well as the right to administrative review of this Consent Order. Such waiver ceases if this Consent Order is rejected by either the Medical Disciplinary Board or the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation.

Respondent and the Department have agreed, in order to resolve this matter, that Respondent, Sushil A. Sheth, be permitted to enter into a Consent Order with the Department, providing for the imposition of disciplinary measures which are fair and equitable under the circumstances and which are consistent with the best interests of the people of the State of Illinois. Respondent has freely and willfully entered into this Consent Order without any threat or coercion by any person. Respondent has not relied on any statements or promises made by or on behalf of the Department other than those specifically set forth in writing herein.


CONDITIONS

WHEREFORE, the Department, through Lisa Stephens, its Chief of Medical Prosecutions, and Sushil A. Sheth, Respondent, hereby agree to the following:

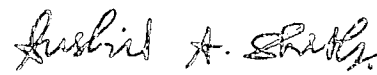
- A. Upon the effective date of this Consent Order, Respondent's Physician and Surgeon License, No. 036081476, and Respondent's Physician Controlled Substance License, No. 336043835, shall be IDEFINITELY SUSPENDED.
- B. Within thirty (30) days of the effective date of this Consent Order, Respondent shall surrender the Certificates of Registration for his Physician and Surgeon License and Physician Controlled Substance License, and all other indicia of licensure to the Department of Financial and Professional Regulation of the State of Illinois. Upon failure to do so, the Department shall seize said Certificates of Registration.
- C. This Consent Order shall become effective upon signing and approval by the Director of the Department.

DEPARTMENT OF FINANCIAL AND
PROFESSIONAL REGULATION of the State of
Illinois


2/17/10
DATE


Lisa Stephens
Chief of Medical Prosecutions

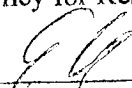
February 04, 2010
DATE


Sushil A. Sheth
Respondent

Feb. 9, 2010
DATE


Jim Fieweger
Attorney for Respondent

2/3/10
DATE



Member
Illinois Medical Disciplinary Board

THIS CONSENT ORDER IS APPROVED IN FULL:

Dated this 26th day of March, 2010.

DEPARTMENT OF FINANCIAL AND
PROFESSIONAL REGULATION of the State of
Illinois;

DIVISION OF PROFESSIONAL REGULATION



DANIEL E. BLUTHARDT
Director

REF: Lic. No. 0360081476
CS Lic No. 336043835
Case No. 200900763

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

AUG 19 2009

JUDGE REBECCA R. PALLMEYER
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA)

vs.)

SUSHIL SHETH)

No. 09 CR 69

Judge Rebecca Pallm

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant SUSHIL SHETH, and his attorney, JAMES FIEWEGER, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

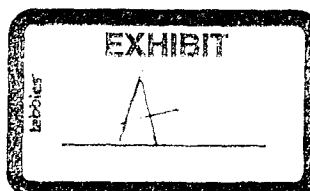
Charge in This Case

2. The information in this case charges defendant with health care fraud, in violation of Title 18, United States Code, Section 1347.

3. Defendant has read the charge against him contained in the information, and that charge has been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crime with which he has been charged.

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the information. The information charges defendant with health care fraud in violation of Title 18, United States Code, Section 1347. In addition, as further provided below, defendant agrees to the entry of a forfeiture judgment.



Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

Beginning no later than in or about January 2002 and continuing to at least in or about approximately June 2007, at Burr Ridge and Flossmoor, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant Dr. Sushil Sheth did knowingly and intentionally devise and participate in a scheme and artifice to defraud health care benefit programs that affected interstate commerce, including the Medicare program and other health care benefit programs, to obtain, by means of materially false and fraudulent pretenses, representations and promises, money owned by, and under the custody and control of these health care benefit programs, including the Medicare program.

In furtherance of this scheme, in or about September 12, 2005, at Burr Ridge, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant knowingly and willfully executed and attempted to execute the charged scheme to defraud a health care benefit program, namely the Medicare program, by knowingly and fraudulently submitting and causing to be submitted to WPS a Medicare reimbursement claim in the amount of \$1,300 for critical care codes 99291 and 99292 allegedly provided to Medicare beneficiary

AJ by defendant on August 19, 2004, defendant then knowing that such medical treatment had not been provided to that Medicare beneficiary.

More specifically, since at least 2001 defendant was a cardiologist who had privileges at three hospitals in the Chicago area: Hospitals A, B and C. In addition to a clinical office leased from a hospital, defendant operated his medical practice out of two administrative offices located in residences that he owned: one in Flossmoor, Illinois ("Flossmoor Administrative Office") and the other in Burr Ridge, Illinois ("Burr Ridge Administrative Office").

Beginning in around 2002 the defendant submitted claims to various health benefit programs including the federal Medicare program, for services that he did not, in fact, provide. In addition to the Medicare program, the defendant falsely billed other federal and private health care benefit programs, including: Advocate Health Partners, Anthem Insurance Company, Benefit Administrative Systems, Benefits Systems & Services, Blue Cross Blue Shield of Illinois, Blue Cross Blue Shield of Michigan, Chicago Carpenters H & W Fund, Cigna Healthcare Benefits, First Heath Life and Health Insurance, Golden Rule Insurance Company, Harmony Health Plan of Illinois, Humana, Laborers' Health and Welfare Fund, Midwest Health Plan, Plumbers Welfare Fund, Principal Life Insurance, Trustmark Insurance, United HealthCare Insurance, University of Chicago, Bakery & Confectionery Union & Industry International Health Benefits Fund, UMWA Health & Retirement Funds, Palmetto Government Benefit Administrators, State of Illinois Comptroller, WPS Tricare for

Life, APWU Health Plan, Mail Handlers Benefit Program, and NALC Health Benefit Plan (collectively referred to as "Additional Victims").

These claims were false and fraudulent because defendant billed Medicare and Additional Victims for services rendered on certain patients, reflected by CPT codes 99291 and 99292, when defendant knew that he had never met with these patients or treated these patients. Defendant would regularly submit claims seeking payment for services under 99291 and 99292 that when added together had defendant providing more than 24 hours of medical services and treatment in a single day. Lastly, defendant billed for services on dates when defendant was traveling outside of Chicago area and therefore was unable to visit or treat a patient in the Chicago area.

The defendant executed his scheme as follows. As a result of providing medical services to certain patients and because defendant maintained treating privileges at certain hospitals, defendant had access to patient records, which contained patient identifying information including insurance provider, policy and/or beneficiary information. As a result of this access, defendant obtained, both with and without the consent of the patients or the hospitals, the patient's name, health insurance provider and beneficiary identification number, and dates the beneficiary stayed in the hospital as well as other information. Defendant used this patient information to prepare handwritten notes that he faxed, from the Burr Ridge and Flossmoor Administrative Offices, to outside billing companies. The defendant paid these billing companies ("Billers") to prepare and submit claims to Medicare

and the Additional Victims in order for defendant to be paid for the services that he purportedly rendered. At defendant's instruction, the Billers prepared health insurance claims based on his false and fraudulent information relating to medical services and treatment that defendant had purportedly rendered so that the claims could be submitted to the relevant health care benefit program, including the Medicare program.

In the handwritten instructions, defendant provided the Billers with false and fraudulent information to submit claims in several ways. First, these handwritten instructions falsely indicated that defendant had performed critical medical care which the defendant knew he had not done because this type of care (represented by CPT codes 99291 and 99292) required hands-on treatment of patients and is time-consuming for the treating physician. Second, defendant falsely and fraudulently included claims for patients that he never treated, treated for lesser conditions, and/or treated less frequently than was claimed. Payments from the Medicare program and other health benefit programs resulting from these false and fraudulent claims were sent to the Flossmoor Administrative Offices.

As a result of the above-described scheme, during the period January 2002 through December 2007, defendant fraudulently obtained approximately \$9,000,000 from the Medicare program as well as other federal victims identified among the Additional Victims and approximately \$4,000,000 from private health benefit programs listed above among the Additional Victims as reimbursement for critical medical care as reflected by CPT codes 99291 and 99292 when in truth and fact those services had not been performed.

Defendant deposited the proceeds of the above described scheme, obtained from Medicare and the Additional Victims, in a number of bank accounts for his personal use. More specifically, defendant deposited his fraud proceeds in Harris Bank account numbers XXXXXX4865, XXXXXX4857, XXXXXX6507, and XXXXXX5839 (collectively "Harris Accounts"), as well as First Bank Account ("First Bank Account") XXXXXX5086. Defendant then transferred fraud proceeds from the Harris Accounts and the First Bank Account to the following accounts: Advanced Equities - Peregrine Investment Account; Advanced Equities-Alien Tech Investment Account; Advanced Equities-Altra Investment Account; Advanced Equities-Force 10 Investment Account; Advanced Equities-Turin Investment Account; AEI Eastern Investments-Motricity Investment Account; AEI Eastern Investments-Motricity Capital Call Account; AEI Greentech I Investment Account; Advanced Equities-Turin Investment Capital Call Account; Oppenheimer Funds Account XXXXXXXXXXXX7485; Oppenheimer Funds Account XXXXXXXXXXXX6710; Oppenheimer Funds Account XXXXXXXXXXXX6721; Bright Start College Account XXXXXX0696; Bright Start College Account XXXXXX0700; Bright Start College Account XXXXXX0704; and Bright Start College Account XXXXXX0717.

The defendant delayed submitting claims until almost 12 months after the dates of purported service.

Maximum Statutory Penalties

7. Defendant understands that the charge in the information to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 10 years' imprisonment. The charge in the information also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court and agrees that this amount is approximately \$13,000,000. The Court also may order restitution to any persons as agreed by the parties.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2008 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level for the charge in the information is 6, pursuant to Guideline §2B1.1(a)(2);

ii. The offense level is increased 20 levels pursuant to Guideline §2B1.1(b)(1)(K) because the loss amount is more than \$7 but less than \$20 million.

iii. The offense level is increased an additional 2 levels pursuant to Guideline §2B1.1(b)(2)(A) because the number of victims is more than 10 but less than 50.

iv. It is the government's position that the offense level is increased an additional 2 levels pursuant to Guideline §3B1.3 because defendant abused a position of trust in committing the charged offense. The defendant disagrees.

v. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline §3E1.1(a), including

by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vi. In accord with Guideline §3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline §3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, it is the government's position that the anticipated offense level is 27, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 70 to 87 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose. It is the defendant's position that the anticipated offense level is 25, which,

when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 57 to 71 months, in addition to any supervised release, fine and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this plea agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant

shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. The government agrees to recommend that sentence be imposed within the applicable guidelines range and to make no further recommendation concerning at what point within the range sentence should be imposed.

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

12. Regarding restitution, the parties acknowledge that the total amount of restitution owed to Medicare and the other federal health benefit programs named among the Additional Victims is approximately \$9,000,000, and the amount of restitution owed to the private health benefit programs named among the Additional Victims is approximately \$4,000,000, minus any credit for funds repaid prior to sentencing, and that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant to make full restitution in the amount outstanding at the time of sentencing. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing.

13. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

Forfeiture

14. The Information charges that defendant is liable to the United States and other private health benefit programs for approximately \$13,000,000, which funds are subject to forfeiture because those funds constitute proceeds of the violation alleged in the Information. Further, defendant has subjected real and personal property to forfeiture, namely: (a) The real property commonly known as 9121 East Andora Hills Drive, Scottsdale, Arizona, (b) The real property commonly known as 40121 East 107th Street, Scottsdale, Arizona; (c) funds in the amount of \$2,463,140.58 from Harris Bank account number XXXXXX4865; (d) funds in the amount of \$2,256,469.55 from Harris Bank account number XXXXXX4857; (e) funds in the amount of \$251,075.93 from Harris Bank account number XXXXXX6507; (f) funds in the amount of \$1,542,543.52 from Harris Bank account number XXXXXX5839; (g) funds in the amount of \$500,000 in Advanced Equities - Peregrine Investment Account; (h) funds in the amount of \$500,000 in Advanced Equities- Alien Tech Investment Account; (i) funds in the amount of \$250,000 in Advanced Equities- Altra Investment Account (j) funds in the amount of \$500,000 in Advanced Equities-Force 10 Investment Account; (k) funds in the amount of \$750,000 in Advanced Equities-Turin Investment Account; (l) funds in the amount of \$500,000 in AEI Eastern Investments-

Motricity Investment Account; (m) funds in the amount of \$401,166 in AEI Eastern Investments-Motricity Capital Call Account; (n) funds in the amount of \$50,000 in AEI Greentech I Investment Account; (o) funds in the amount of \$150,042.36 in Advanced Equities-Turin Investment Capital Call Account; (p) funds in the amount of \$723,704.11 in Oppenheimer Funds Account XXXXXXXXXX7485; (q) funds in the amount of \$56,520.91 in Oppenheimer Funds Account XXXXXXXXXX6710; (r) funds in the amount of \$56,520.91 in Oppenheimer Funds Account XXXXXXXXXX6721; (s) funds in the amount of \$60,961.64 in Bright Start College Account XXXXXX0696; (t) funds in the amount of \$62,203.58 in Bright Start College Account XXXXXX0700; (u) funds in the amount of \$62,349.31 in Bright Start College Account XXXXXX0704; (v) funds in the amount of \$60,905.67 in Bright Start College Account XXXXXX0717; (w) funds in the amount of \$161,948.16 in First Bank Account XXXXXX5086 because that property and funds totaling approximately \$11,359,545 are proceeds of the offense charged in the information. Further, defendant has subjected real and personal property to forfeiture, namely (a) the real property commonly known as 8691 Crown Ct., Burr Ridge, Illinois; (b) the real property commonly known as 850 Village Center Drive, Unit 209, Burr Ridge, Illinois; (c) funds in the amount of \$1,002,544.73 in Harris Bank Investment Account XXXXXXXXXX3944; and (d) One 2002 BMW X5, VIN number 5UXFA53512LP48302; because the property and funds constitute substitute assets and property. By entry of a guilty plea to the charge in the

information, defendant acknowledges that the property identified above is subject to forfeiture.

15. Defendant agrees to the entry of a forfeiture judgment in the amount of approximately \$13,000,000, and against the property identified above, in that this property is subject to forfeiture. Prior to sentencing, defendant agrees to the entry of a preliminary order of forfeiture relinquishing any right of ownership he has in the above-described funds and property and further agrees to the seizure of these funds and property so that these funds and property may be disposed of according to law. Further, defendant agrees to execute any documents necessary to effectuate the transfer of his interest in any real or personal property subject to forfeiture. Defendant is aware that third parties may have claims to the property subject to forfeiture, but defendant's interest in the property exists because defendant is the owner of the property and funds described above and that are subject to forfeiture.

16. Defendant understands that the government may satisfy this forfeiture judgment with substitute assets pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b)(1). Any attempt on the part of defendant to transfer, convey or otherwise conceal property prior to the satisfaction of this judgment shall be deemed to violate this plea agreement and subject him potentially to further criminal prosecution. If such conveyances are discovered prior to the imposition of sentence, the defendant understands that there will be no two-level reduction in the base offense level for acceptance of responsibility.

17. Defendant further understands that while forfeiture of property is not typically treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose, it is agreed by the parties that any payments made in satisfaction of the forfeiture judgment shall be credited to any outstanding restitution judgment.

Presentence Investigation Report/Post-Sentence Supervision

18. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing.

19. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline §3E1.1 and enhancement of his sentence for obstruction of justice under Guideline §3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

20. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

21. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 09 CR 69.

22. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District

of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

23. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Right to be charged by indictment.** Defendant understands that he has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

b. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could

require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

c. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution or forfeiture, in exchange for the concessions made by the United States in this Plea Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) his attorney's alleged failure or refusal to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of

involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation, nor does it apply to a request by defendant pursuant to Sentencing Guideline §1B1.10 and 18 U.S.C. § 3582(c) for a reduction of sentence as a result of an amendment to the Sentencing Guidelines applicable to defendant and expressly made retroactive by the United States Sentencing Commission.

d. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant understands that he has the right to have the criminal charge in the information brought within five years of the last of the alleged acts constituting the specified violation. By signing this document, defendant knowingly waives any right to have the charge in the information brought against him within the period established by the statute of limitations. Defendant also knowingly waives any defense or claim based upon the statute of limitations or upon the timeliness with which the charge in the information was brought.

Other Terms

24. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.